

**APPROVED 7/23/03**

**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

**MINUTES**

**DATE:** June 25, 2003

**TIME:** 7:30 P.M.

**PLACE:** Westford Academy Lecture Hall

**PRESENT:** Sam Frank, Dave Earl, Ron Johnson, Roger Hall,  
Jay Enis, Jim Kazeniak

**ABSENT:** Bob Herrmann

**OTHERS**

**PRESENT:** Jennifer Burke, Permitting Office Manager; Ellen Doucette-Town Counsel; Norman Khumalo-Assistant Town Manager; Anthony Ma-Howe Surveying; Peter King-Golder Associates; Chris Lorraine, LANDTECH Consultants; Robert Walker-applicant

**CONCORD PLACE, 137 CONCORD ROAD, COMPREHENSIVE PERMIT**

Frank read a letter from Attorney Douglas Deschenes requesting a continuance of the public hearing to allow the applicant the opportunity to review design changes from the initial public hearing and meetings with the Planning Department. It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to continue the public hearing for Concord Place to July 23, 2003. Frank reported that he recently spoke to a neighbor of this development who also had a well that would impinge on the septic system as originally designed. Frank referred the abutter to the proper department.

**ROSEGATE AT WESTFORD, 99 MAIN STREET – COMPREHENSIVE PERMIT**

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to re-open the public hearing for Rosegate.

### **Review of Work Since Last Public Hearing by Chairman**

Frank announced that this was the fifth public hearing on Rosegate at Westford, 99 Main Street. Frank stated that since the last public meeting some facts have come forward and there have been a few meetings.

**Gasoline Tank** - Frank stated that relative to the gas tank on the property an e-mail was received from Don Parsons, Fire Prevention Officer, to Norman Khumalo dated June 2, 2003. Parsons wrote that the 1,000 gallon steel gasoline tank was removed from 99 Main Street on May 11, 1993. Frank stated that he has not seen the actual primary record of that matter but Parsons apparently has seen the record. Frank stated that he would follow up with Parsons to confirm or determine if there is any further information regarding the tank.

**Town Engineer Memo** – Frank read a memo from Jesse Johnson, Acting Town Engineer, dated June 17, 2003 regarding a review of a letter from Howe Surveying dated June 4, 2003 and the response of that letter from LANDTECH Consultants dated June 9, 2003.

**Board of Health Memo** – Frank read a memo from the Board of Health dated June 17, 2003 regarding the status update of the recommendations of the waivers and variances requested from the local Board of Health.

**Memo from Don Parsons, Fire Prevention Officer** – Frank read a memo from the Fire Prevention Officer regarding review of the submitted revised site plans dated June 9, 2003.

**Fiscal Impact of New Housing Development in Massachusetts – A Critical Analysis** - Frank referenced the report regarding the number of children that can be expected in 2-bedroom stand alone single family homes.

### **Two Reports from Howe Surveying**

**Work Session Held on June 16, 2003** – Frank reported that the Town' Consultant, John Winslow, had produced and forwarded architectural alternatives to the applicant to address massing and scaling. The applicant said that he already invested time and money and did not want to waste it and that the design presented is what he is going forward with. Frank also reported that there was a discussion about the pro forma and the technical advisor was instructed to submit that for review by his analyst. Frank stated that they asked about the 150 gallons per day per bedroom which is the local requirement. The applicant was asked to rough out how that might work, the impact on the site, etc.

**Meeting with the Technical Advisor on June 17, 2003** – Frank reported that a meeting was held to go over some of the fine points of the 40B process.

### **Report from Howe Surveying**

Tony Ma, Howe Surveying, updated the Board on the review of the latest plan and the information discussed at the work session. Ma described the changes to the plans.

### **Report from Golder Associates**

Peter King, Golder Associates, updated the Board on the work session discussions which included mounding of the septic, the 150 gallon per day per bedroom criteria, and Conservation issues regarding impervious barriers. King explained mounding of the septic system. Chris Lorrain, LANDTECH Consultants, reported that the applicant has agreed to install an impermeable barrier placed around the periphery of the leaching field which would have a tendency to take that mounding and migrate it downwards and away from the septic system.

The Board discussed with Lorrain and Ma the size and depth of the detention basin and safety issues associated with the basin. Doucette suggested having the submitted maintenance plan be a condition of the permit and proof of maintenance be submitted to the Board to make sure that condition stays current.

Lorrain reported that they have submitted to Golder a layout of what the system would look like if it was designed based on 150 gallons per day. Lorrain out-lined how the plans would change based upon that layout. Lorrain felt that the 150 gallons per day was not necessary and that 110 gallons meets the State criteria. The actual flow from single family homes and townhouses has been shown to be approximately 55 gallons per bedroom. The State takes that number and doubles it to 110 gallons per bedroom for a factor of safety. The Westford Board of Health increased that number to 150 gallons per day several years ago in case a bedroom was added to a house in the future there would be no need to increase the septic system. Earl stated that the Board of Health actually had three reasons for increasing to 150 gallons. Frank stated that John Garside, Board of Health, recited the three reasons in the recent work session, i.e., the addition or expansion for single family homes, increasing the life of the system, and technical standards relating to the leach field. Frank stated that the Board was concerned that the Homeowner's Association and residents on a limited income will not be able to deal with a system failure. Lorrain stated that the applicant has covenanted that the units will be two bedroom units and that there will be no expansion of the units with additional bedrooms. Lorrain felt that based on all that criteria the design based on 110 gallons per day is justified.

Earl stated that it was his understanding that Golder is recommending a detailed hydrogeologic analysis because of the concerns of the water on the site. King stated that their position is that if the Westford criteria are applicable for 150 gallons per day per bedroom then the screening analysis that they applied to it indicates that mounding is a potential concern. Earl felt that the Board would be negligent if it did not require the 150 gallons. Lorrain disagreed and stated that they addressed all the issues pertaining to surface water flow in regards to drainage or the vernal pool and provided all the information to Golder. Lorrain stated that the report from Golder indicated that they will not impact the vernal pool based upon the information provided to them. Frank asked King to look at where the cross over point is regarding mounding at the 150 gallons versus 110 gallons. King will do the calculations and report back to the Board.

Frank indicated that the Board had asked to see the building in relation to its neighbors from at least a front elevation and now it is being said that a larger septic field will cause the building to be higher. Frank asked the applicant if they had any intent to provide that drawing to the Board. Lorrain questioned whether a rendering would justify the depth perception. Frank reiterated his request for an isometric rendering of the site and adjacent buildings. Lorrain stated that he would refer that question to the applicant

as it is an architectural issue. Walker stated that he would look into whether or not a rendering would be provided.

Earl asked for information regarding the play area on the site. Lorrain pointed out the 1,200 sq. ft. play area location. The area is relatively flat and somewhat wooded, approximately 50 ft. away from the edge of the detention basin and 40-45 ft. away from the wetlands.

Hall asked Lorrain if the site, as designed and engineered, was capable of handling the project as it is. Hall also asked King and Ma whether they believed the site to be adequate for the design of the septic system and the water runoff. Ma stated that all engineers use the same set of regulations. Ma stated that the drainage can handle the site based upon their proposal and general engineering practices. Lorrain stated that they exceed several regulations within the Town including density. Lorrain pointed out that he has worked in Westford and surrounding towns for 20 years and if he felt that this site was not designed properly for the characteristics of this site he would not be in front of the Zoning Board. King was also satisfied that the applicant has demonstrated that the vernal pool is uphill of the site and that they have made improvements by putting in an impervious barrier so that flow will not go toward the vernal pool. Johnson asked if Lorrain, King or Ma saw any negative impact on the abutters from the groundwater flow, or any potential of increasing water flow onto abutters' properties. King stated that he did not see a potential of increased water flow. King stated that one of the beneficial factors of the general area of the site is the groundwater flow from north to south. King stated that the discharge of the excess groundwater will be to the stream in the rear.

Khumalo requested that the applicant provide some information regarding the economic impact of the 110 gallon per day versus 150 gallons per day. Frank stated that at the next work session that information could be discussed. Khumalo asked the applicant to provide information on how a replacement septic system would be paid for if a replacement is needed. Lorrain stated that the condominium fees would pay for septic repair, parking lot pavement, maintenance, etc. Khumalo asked the applicant to provide draft condominium documents for Town Counsel's review. Khumalo to work with the applicant regarding those documents. Frank stated that the Affordable Housing Committee will also review the condominium documents as to the affordable provisions.

Frank asked King to describe what the hydrogeologic analysis will provide, what it consists of, how long it will take, and the cost of the analysis for the applicant. King stated that the hydrogeologic analysis would look at not just the static water levels but would look at some of the dynamic elements to determine what happens when you put water in the ground, i.e., where does it go, how fast, how much would it mound. It would involve some level of field testing which would probably be done by pouring water in one of the wells and measuring the response of that water in other wells on the site and keeping track of this over time. King estimated the cost of the hydrogeologic analysis to be between a few thousand to \$10,000-\$12,000. The applicant would do the analysis and Golder Associates would review it. Lorrain pointed out that the Board of Health did not inform the Zoning Board that 110 gallons per day per bedroom was not accurate. Frank asked Lorrain to provide his sources to understand where Lorrain is getting his numbers regarding the septic design. Lorrain felt that asking for the hydrogeologic analysis was not practical. Johnson suggested asking the Water Department to provide information regarding water usage of an average household to get

some kind of range or an idea of water usage. Staff to contact the Water Department. Walker stated that to design this system for 150 gallons per day is uneconomic. Walker stated that he would include the cost of the hydrogeologic study in his analysis of the 150 gallons per day.

### ***PUBLIC INPUT***

Sandy Martinez, 95 Main Street, pointed out that the property is the lowest spot from the hill on down. Martinez was concerned that elevation of the ground will be changed by earth moving and that her property will then become the lowest spot. Martinez stated that she mentioned this to Walker during a site visit and Walker told her that is what he has engineers for. Martinez asked for a guarantee from Lorrain that when this project was finished the elevation of 99 Main Street is not going to be changed and higher than it is now. Lorrain stated that the elevation of Martinez's property will not change because nothing is being done to her property. Martinez reiterated her concerns regarding the elevation of 99 Main Street and that it will not be higher than it is right now. Martinez was concerned that her septic system and the surrounding vegetation would be impacted. Lorrain stated that the elevations are going to change and the appropriate control mechanisms have been put in place to direct any increase in the amount of runoff that is generated from the parking lot, impervious roofs, etc., into the detention basin in the rear where it can be properly controlled. Lorrain stated that the site has been engineered with proper engineering methodology and reviewed by competent consultants who have agreed with the engineering. Lorrain stated that he could not take responsibility for acts of God, construction, etc. Lorrain stated that the site has been engineered in accordance with all applicable regulations. Martinez stated no one takes responsibility for the construction and what happens after this is signed off. Martinez stated that they had asked originally that there would be some kind of a fund set up in case of detrimental result to her property it would be taken care of financially. Martinez raised that issue again because she still does not have an answer. Martinez stated that it does not take very much reasoning to figure out that if you have all of that runoff from down the hill it ends up in the lowest place. Martinez was concerned that the runoff will end up on her land if the elevation of the development site is changed. Lorrain reiterated that the engineering design directs the water down into the retention basin in the back of the site. Lorrain also reiterated that the Town's engineering consultant agrees with the design. Lorrain outlined grading data. Martinez expressed concerns regarding the closed private meetings being held with the developer and board members as she is the person most directly affected by the development.

Dennis Keris, 100 Main Street, asked if the site is free and clear of all hazardous materials under federal law. Keris pointed out that this site has had multiple uses. Keris asked if the site had to be free and clear before any work can go on this piece of property. Frank stated that as part of the bank application the applicant did a so-called environmental screen. Keris asked if a 21-E test was done. Frank stated that 21-E testing was not done. Frank stated that the Board has asked applicant's counsel to provide a copy of the environmental screen. Frank stated that applicant's counsel indicated that he would provide the screen if he could find it. Frank asked the applicant to get a copy of the environmental screen from the bank if he cannot find it otherwise. Frank stated that the Board would use the environmental screen as a starting point and take it from there. Frank indicated that the Board of Health has also requested a copy of the environmental screen. Keris stated that time and time again people have walked the property, different boards have looked at it, and the question has come up time and time

again, that there have been hazardous materials on that property, there have been underground tanks. Neighbors and abutters have suggested that somebody look into this before this whole process continues the way it is continuing. Frank stated that it is an open issue. Keris questioned the engineering of the 110 gallons per day. Keris also questioned the issue of one homeowner on a piece of property versus 12 homeowners on a piece of property. Keris stated that he was still not quite sure he could fathom 12 different families on 1.44 acres of real land putting stuff into a system and how that piece of property is going to contain that amount of water. Keris also questioned how all the water is going to swale around the back of the site. Keris asked if the state will make a vernal pool in the back of the site if the water does not drain properly and stays there for a considerable period of time. Keris felt that the system needed to be maintained all the time to keep it flowing free and clear. Frank stated this has special maintenance requirements because it is a more intense development. Frank stated that it will be incumbent on the applicant to put together good maintenance plans and training for the management company or homeowners association. Keris reminded the Board that at the beginning of the 40B discussions the Board indicated that they would sit down for a working session with all the neighbors and abutters. Keris asked when the neighbors and abutters would be able to sit down with the Board. Frank stated that the neighbors and abutters can provide input and concerns at these types of meetings with the engineers and applicant. Keris asked where the runoff and detention would be in proximity to the proposed 1,200 sq. ft. play area. Lorrain stated that the play area is approximately 40-50 ft. from the edge of the retention basin. Keris asked if there would be natural vegetation or some kind of deterrent to keep people from venturing into the water areas. Lorrain stated that the Board may or may not be considering fencing. Keris asked what delineates the play area from the commercial area of Lil' Peach. Lorrain stated that the area will be kept as naturalized as possible. Keris asked King if the drainage would impact the wells on Leland Road. King stated that the intermittent stream acts as a natural divide so that groundwater and surface water will not flow across the development onto Leland Road.

Frank Sherman, 104 Main Street, asked if a permit had been pulled for the removal of the gas tanks. Johnson stated that the Fire Department has indicated in a letter that the gas tanks have been removed. The Board has requested additional information from the Fire Department. Sherman clarified that it is unknown if a permit was obtained or if an engineer was on the site during the removal. Khumalo reported that he talked to Don Parsons, the Fire Prevention Officer, regarding documentation. Khumalo stated that documentation could not be found at this point but Parsons did find the man who removed the tank. Khumalo to follow up on this matter. Khumalo suggested that the Fire Chief attend the next meeting. Khumalo stated that EPA sites were investigated and that the Fire Chief has contacted the Fire Marshall's office. Keris was concerned that the property could be contaminated and the contamination could spread during construction. Keris felt that this issue should be a priority and be treated the same as a gas station. Keris asked that a 21-E test be conducted to address the concerns. Sherman stated that the EPA does not get involved with a standard tank pull. Sherman clarified that if there is a minor contamination it is usually delegated the local fire department as was the practice prior to 1995.

Anthony George, 102 Main Street, asked if it was possible that they did not pull the tank and just filled it with sand because that was a method that was advocated at one time with underground oil tanks. George asked for clarification regarding the 150 gallons versus 110 gallons as proposed by the applicant. Frank stated that the subdivision

control law gives the town the authority to implement health and environmental standards stricter than those of the state which are applicable to subdivisions and any other commercial buildings. Frank stated that Comprehensive Permits come under Chapter 40B and there is specific language in there that says that town regulations can be waived if the applicant can show that they make the project uneconomic. George asked if reducing the size of the project would solve the septic questions. Frank stated that reducing the density would also reduce the septic requirements. George asked if the engineering was done under the assumption that all the waivers would be agreed to by the Town. Lorrain stated that he designed the site at 110 gallons per day and the Town's engineer reviewed that design.

Sandy Martinez, 95 Main Street, stated that she has been bothered by the way the reports are given to the Board on the night of the meeting. Frank stated that the Board has tried to institute a policy whereby everything is mailed out on a Friday. Frank stated that some items came in today and since the meetings take place once a month he has asked the Board to bring the items into the discussion tonight. Martinez was concerned that the information is given to the Board at the last minute so that the Board does not have time to read it over and know what is going on to have a thought process about it before the meeting. Martinez felt that there should be some requirement to provide information before the meetings. Frank stated that the Board will not discuss information if there is not adequate time for review.

Gordon Stevenson, 134 Concord Road, asked if there were representatives from the Board of Health or the Conservation Commission present at this meeting. Frank stated that there was no one present representing the Board of Health or the Conservation Commission. Frank pointed out a member of the Selectmen and Affordable Housing Committee in the audience. Stevenson felt that the discussion regarding 150 gallons versus 110 gallons may have been facilitated better if there was someone with more knowledge present representing the Town. Frank stated that representation is present at the working sessions. Frank felt that a clear recap of those working sessions have been given to the residents. Frank stated that when he gets to the open issues he will summarize where the Board of Health and Conservation Commission stand. Stevenson felt that it would be a favor to the developer if the Town communicated at the start that it would not look favorably going beyond a certain density.

Alan Hicks, 130 Concord Road, felt that the septic system capacity should be judged on the number of people and the type of water use.

A resident asked if the applicant predicted the actual percentage of profit. Frank stated that the pro forma has been submitted for analysis which will be addressed at some point in the future. Walker pointed out that the pro forma has already been reviewed and accepted by the State.

Dennis Keris, 100 Main Street, asked if the site as currently proposed and designed was at its maximum or could it handle more bedrooms and more units. Frank stated that this is what the developer is proposing and once it gets built and turned over to a homeowners association it probably will not be expanded. Keris asked if the land would handle the water flow better if the development was smaller. Frank stated that an analysis was done for 27 bedrooms and the engineers have said it is an adequate design.

Anthony George, 102 Main Street, stated that the Town needs to be extra careful on this site given the vernal pools, water in the back, low land, etc. George suggested that it would be wise to be careful and reduce the impact on this land. Frank stated that part of the Board's deliberations will be to grant or deny variances and what trades will be made. Those deliberations will be during public session.

Frank asked Ma and King if they had any remaining engineering issues. Ma stated that he has not had an opportunity to review the entire revised septic system plan as it was just received today. Ma had no fundamental issues regarding the design. Ma stated that the applicant has satisfied all of his requests. King stated that he was waiting for his comments to be incorporated on a revised plan.

Lorraine addressed the plans for the retaining wall.

Frank outlined the outstanding issues:

Gas tank removal – additional information needed; environmental screen to be provided by the applicant; building access to be discussed with Parsons; Board of Health review; Conservation Commission review; building height – written opinion to be provided by the Building Commissioner; water pressure and drainage easement; groundwater mounding is adequate if remaining at 110 but if increased to 150 gallons it will open up again; variance requests to be reviewed by the applicant's attorney in particular the Table of Dimensional requirements relative to 3 stories and wetlands limitations; applicant's attorney to provide his suggestions for conditions in the Comprehensive Permit relating to maintenance turnover, deed restrictions, etc.; 2 versions of the front elevations; applicant to discuss with his counsel whether he was willing to reinstate any of the Board members who have missed a meeting; the applicant to show economics of 150 gallons and hydrogeologic analysis.

Frank outlined satisfied issues:

Septic is down gradient from the vernal pool and has been adequately demonstrated; stormwater management has been adequately designed; site distance going out from the entrance is adequate and traffic loading is not a problem; building design; feasibility of the 150 gallon leach field has been demonstrated and the impacts on the site design have been mentioned in a letter from LANDTECH.

Khumalo invited any residents to Town Hall to review data. Khumalo assured the audience that there are no negotiations behind closed doors. Frank indicated that Attorney Bobrowski, consultant, said that any Board member attending a work session cannot make a recommendation to the Board.

#### **MOTION TO CONTINUE**

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to continue the public hearing to July 23, 2003 at 7:30 p.m.

#### **DISCUSSION OF ZBA POLICIES**

Frank asked to put together a "lessons learned" document on Chapter 40B. Frank asked the Board for input. Variances and Use Variances criteria to be discussed in the future.

#### **ADJOURNMENT**

It was moved by Johnson, seconded by Earl, and VOTED 6 IN FAVOR WITH 1 ABSENT (Herrmann), to adjourn the meeting.

Submitted by Beth Kinney, Recording Secretary